



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

C-570-054

Certain Aluminum Foil from the People's Republic of China: Notice of Court Decision Not in Harmony with the Amended Final Determination in the Countervailing Duty Investigation, and Notice of Amended Final Determination and Amended Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On March 24, 2020, the United States Court of International Trade (CIT) issued its final judgment in *Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, Court No. 18-00089, sustaining the Department of Commerce (Commerce)'s remand redetermination concerning the final determination in the countervailing duty (CVD) investigation of certain aluminum foil (aluminum foil) from the People's Republic of China (China), covering the period of investigation (POI) January 1, 2016 through December 31, 2016. Commerce is notifying the public that the CIT's final judgment is not in harmony with the *Amended Final Determination* and *Order* of the investigation and that Commerce is amending the *Amended Final Determination* and *Order* with respect to the CVD cash deposit rate assigned to Jiangsu Zhongji Lamination Materials Co., Ltd., Shantou Wanshun Package Material Stock Co., Ltd., Jiangsu Huafeng Aluminum Industry Co., Ltd., and Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. (collectively, Zhongji) and all other companies.

DATES: Applicable April 3, 2020.

FOR FURTHER INFORMATION CONTACT: John McGowan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department

of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-3019.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2018, Commerce published the *Final Determination*, finding, *inter alia*, that Zhongji used the Export Buyer's Credit Program and failed to meet the criteria for an entered value adjustment.¹ Commerce published an *Amended Final Determination and Order* resulting from the investigation on April 19, 2018.² Zhongji challenged the *Amended Final Determination and Order* before the CIT. On September 18, 2019, the CIT remanded Commerce's determination for further analysis, instructing the parties to contemplate a solution to the impasse and to confer for the Export Buyer's Credit Program, and instructing Commerce to identify the information that Commerce uncovered at verification that caused Commerce to find unsupported Zhongji's request for an entered value adjustment (EVA).³ Commerce issued a redetermination on remand, under protest, explaining Commerce's position that Commerce cannot accurately verify use of the Export Buyer's Credit Program without the cooperation of the Government of China, but nevertheless finding that Zhongji did not use the Export Buyer's Credit Program, in light of the CIT's remands on the issue.⁴ Additionally, in its redetermination, Commerce

¹ See *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Final Determination*), and accompanying Issues and Decision Memorandum.

² See *Certain Aluminum Foil from the People's Republic of China: Amended Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 17360 (April 19, 2018) (*Amended Final Determination and Order*).

³ See *Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, Court No. 18-00089, Slip Op. 19-122 (CIT September 18, 2019).

⁴ See *Final Results of Redetermination Pursuant to Court Order, Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, Court No. 18-00089, dated January 27, 2020 (*Remand Results*).

addressed how information discovered at verification supported its finding that Zhongji's request for an EVA is unsupported, however, because Zhongji was not provided notice that Commerce intended to reconsider its EVA methodology for the *Final Determination*, Commerce determined it appropriate to grant Zhongji's EVA request. On March 24, 2020, the Court sustained the *Remand Results*.⁵

Timken Notice

In its decision in *Timken*,⁶ as clarified by *Diamond Sawblades*,⁷ the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's March 24, 2020, judgment in this case constitutes a final decision of the court that is not in harmony with Commerce's *Amended Final Determination and Order*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination and Order

Because there is now a final court decision, Commerce is amending its *Amended Final Determination and Order*. Commerce finds that the revised countervailable subsidy rate for Zhongji is 6.46 percent. We have also re-calculated the all-others rate to 13.28 percent.

Cash Deposit Requirements

Because Zhongji and all other companies do not have superseding cash deposit rates, *i.e.*, there have been no final results published in subsequent administrative reviews for Zhongji and

⁵ See *Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, Court No. 18-00089, Slip Op. 20-39 (CIT March 24, 2020).

⁶ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

⁷ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

all other companies, Commerce will issue revised cash deposit instructions to Customs and Border Protection.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e), 705(c)(1)(B), and 777(i)(1) of the Act.

Dated: July 30, 2020.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-17167 Filed: 8/5/2020 8:45 am; Publication Date: 8/6/2020]